

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-X

GUILLERMO PIMENTEL,

Plaintiff,

– against –

MEMORIES PUB INC. and
ALBERTO OLIVEIRA,

Defendants.

ORDER
16-CV-0051 (JFB) (ARL)

LONG ISLAND OFFICE

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ APR 25 2018 ★

-X
JOSEPH F. BIANCO, District Judge:

On August 24, 2017, this Court entered default judgment against defendants Memories Pub Inc. and Alberto Oliveira (together, “defendants”) and referred the matter to Magistrate Judge Arlene R. Lindsay for a Report and Recommendation to address the issue of damages and other relief sought by plaintiff. (ECF No. 24.) On February 20, 2018, Judge Lindsay issued a Report and Recommendation (“R&R”), recommending that plaintiff be awarded \$42,382.13 in unpaid minimum, overtime, and spread-of-hours wages; \$42,382.13 in liquidated damages; \$10.45 per day in prejudgment interest from August 19, 2013 until the date of judgment; and \$9,187.50 in attorney’s fees and costs. (ECF No. 25.)

A copy of the R&R was served on defendants on April 5, 2018. (See ECF No. 26.) Judge Lindsay directed that any objections to the R&R be filed within fourteen (14) days of service of the R&R. (R&R at 9.) The deadline has since passed, and no party has filed objections.

Where there are no objections, the Court may adopt a report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”); *see also Mario v. P & C Food Mkts.*,

Inc., 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”); *cf.* 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) (“[B]ecause the waiver rule is non jurisdictional, we ‘may excuse the default in the interests of justice.’” (quoting *Thomas*, 474 U.S. at 155)).

Although no party has objected to the R&R, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the full record and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety.

Accordingly, IT IS HEREBY ORDERED that plaintiff is awarded \$42,382.13 in unpaid minimum, overtime, and spread-of-hours wages; \$42,382.13 in liquidated damages; \$10.45 per day in prejudgment interest from August 19, 2013 until the date of judgment; and \$9,187.50 in attorney’s fees and costs. IT IS FURTHER ORDERED that plaintiff shall serve a copy of this Order on defendants and file proof of service with the Court.

SO ORDERED.

Joseph F. Bianco
JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: April 2018
Central Islip, New York